

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Michael W. Monroe)	0000404130
)	
Renewal of License for)	
SMR Station KNHH631)	
Waycross, Georgia)	

ORDER

Adopted: April 4, 2003

Released: April 7, 2003

By the Chief, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On July 29, 2002, Michael W. Monroe (Monroe) filed a petition seeking partial reconsideration of a June 27, 2002 letter decision granting Monroe a limited waiver of the renewal deadline for the above-captioned application. The waiver was granted subject to Monroe's acceptance of a condition on the license providing that operations were authorized on a secondary basis only. Because Monroe did not file an amendment to his application accepting the condition, the Commercial Wireless Division's Licensing and Technical Analysis Branch (Licensing Branch) dismissed the renewal application on December 16, 2002. Monroe filed a second petition on September 26, 2002, seeking reconsideration of that dismissal (Second Petition).

2. For the reasons discussed below, we grant Monroe's Petition for Partial Reconsideration, remove the condition authorizing operations on a secondary basis only, grant the Waiver Request, and direct the Licensing Branch to return Monroe's application to pending status for processing under Commission rules. Because we are granting Monroe's Petition for Partial Reconsideration, we dismiss Monroe's Second Petition as moot.

II. BACKGROUND

3. The above-captioned license was granted to Monroe on October 31, 1995, to provide trunked Specialized Mobile Radio service in Ware County, Georgia. The expiration date on Monroe's license was October 31, 2000. Prior to that date, Monroe entered into a frequency relocation agreement with Nextel Communications, Inc. (Nextel), and Monroe filed a modification application for Station KNHH631 to facilitate the frequency relocation. As a result of the frequency swap, Monroe is currently authorized to operate on the same 800 MHz channels authorized to Nextel and Southern Communications Services, Inc. (Southern) as geographic area licensees.¹ While the modification application was granted on August 1, 2000, the expiration date for Monroe's modified license remained the same as the original

¹ Station KNHH631 authorized service on 851.0375, 852.0375, 853.0375, 856.0625m 857.0625, and 858.0625 MHz. Nextel is the geographic area licensee on channel blocks DD (852.0375 MHz), EE (853.0375 MHz), F (854.0375 MHz), and I (856.0625, 857.0625, 858.0625 MHz). Southern is the geographic area licensee on channel block D (851.0375 MHz).

expiration date, October 31, 2000. Monroe failed to submit a renewal application and the status of the license was changed to cancelled in the Commission's database on December 31, 2000.

4. On March 22, 2001, Monroe filed an application for renewal along with a request for waiver of Section 1.949(a) of the Commission's rules, which requires that renewal applications be filed prior to license expiration.² Section 1.955(a) of the Commission's rules provides that a license automatically terminates on its expiration date unless a timely application for renewal is filed.³ In his Waiver Request, Monroe stated that he did not timely file a renewal application because he believed that, in situations where a modified license is granted within six months of the original license's expiration date, the Commission's standard procedure was to issue the modified license for a full license term commencing on the issue date.⁴ Monroe also included along with his Waiver Request a letter from Nextel stating that Nextel does not object to the renewal of the license for Station KNHH631.⁵ On June 27, 2002, the Commercial Wireless Division's Policy and Rules Branch issued a letter granting Monroe a limited waiver.⁶ Specifically, the Policy and Rules Branch rejected Monroe's explanation as inadequate for the grant of a full waiver,⁷ but found that granting Monroe a limited waiver would serve the public interest. In granting a limited waiver, the Policy and Rules Branch conditioned the grant of any license issued to Monroe on his accepting a license to operate on a secondary basis only.⁸

5. In response, Monroe filed his Petition for Partial Reconsideration arguing, among other things, that the affected geographic area licensees had consented to the renewal of his license. To support this claim, Monroe argues that Nextel had provided written consent and that Southern's lack of opposition constitutes consent.⁹ On February 28, 2003, after Monroe filed his Petition for Partial Reconsideration,

² FCC Application for Wireless Telecommunications Bureau Radio Service Authorization, FCC Form 601, File No. 0000404130 at Exhibit A (Mar. 22, 2001) (Letter from Michael W. Monroe to FCC (Mar. 22, 2001) (waiver request and request for expedited action)) (Monroe Waiver Request). On November 9, 2001, the Licensing Branch directed Monroe to provide a certificate of service demonstrating that he had served of copy of the application on Southern and to obtain frequency coordination for the application. Monroe filed amended applications on December 4, 2001, and December 17, 2001, complying with the Licensing Branch instructions.

³ 47 C.F.R. § 1.955(a)(1).

⁴ Monroe Waiver Request at 1.

⁵ Monroe Application File No. 0000404130 at Ex. B (Letter from Robert H. McNamara, Senior Corporate Counsel, Regulatory Technology & Compliance, to CWD Licensing and Technical Analysis Branch, Gettysburg (Mar. 16, 2001) (stating that "[i]n view of the [Asset Exchange] Agreement between Nextel and Monroe, and the circumstances regarding the untimely renewal, Nextel supports Monroe's request for reinstatement of Station KNHH631).

⁶ Letter from Paul D'Ari, Chief, Policy and Rules Branch, Commercial Wireless Division, to Alan S. Tilles, Counsel for Michael W. Monroe (June 27, 2002) (PRB Letter).

⁷ PRB Letter at 2. The Policy and Rules Branch found that each licensee is solely responsible for knowing the terms of its license and a licensee's misunderstanding regarding the Commission's license renewal procedures in not sufficient in itself to warrant the grant of a waiver. *Id.*

⁸ PRB Letter at 2. In granting the limited waiver, the Policy and Rules Branch imposed the following conditions: (1) any license granted to Monroe pursuant to the waiver will have secondary status to the geographic area licensee for the economic area of which any of Monroe's current interference contour is a part; and (2) upon receiving notice from the geographic area licensee that it intends, within ninety days, to initiate operation of a facility, where the facility's service contour will overlap with the interference contour of any transmitter licensed pursuant to the waiver, Monroe shall, within ninety days of receiving notice, either cease operation of the transmitter in question or change its technical parameters to eliminate its overlapping interference contour. *Id.*

⁹ Petition for Partial Reconsideration filed by Michael W. Monroe (July 29, 2002). Monroe also argues that the spectrum swap was a unique situation that caused confusion for small businesses and a commercial SMR business cannot be operated on a secondary basis. *Id.* at 3-4.

Southern filed a letter with the Commission stating that it did not object to the renewal of Monroe's license.¹⁰

6. To facilitate the June 27, 2002 decision, Monroe was required to amend his application within thirty days of the date of the Policy and Rules Branch letter indicating that he would accept the conditions. He did not amend his application, and the Licensing Branch dismissed Monroe's application on December 31, 2002. In response to the dismissal, Monroe filed its Second Petition requesting that his application be returned to pending status.¹¹

III. DISCUSSION

7. We grant Monroe's Petition for Partial Reconsideration and request for waiver of the filing deadline for renewal applications because of the unique facts in this case. Under Section 1.925 of the Commission's rules, we may grant a waiver request if: (1) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (2) in view of unique or unusual factual circumstances of the instant case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.¹²

8. We find the unique facts of this case would make strict application of the Commission's rules governing renewal deadlines inequitable and contrary to the public interest. Monroe is authorized to operate the license for Station KNHH631 on channels obtained from a frequency exchange between Monroe and Nextel, one of the affected geographic area licensees. Moreover, both geographic area licensees have formally filed with the Commission written statements confirming that they are not opposed to the renewal of Monroe's license to operate on a primary basis. Accordingly, we grant Monroe's Petition for Partial Reconsideration, reverse our decision conditioning the grant of Monroe's Waiver Request on acceptance of a license to operate on a secondary basis, grant Monroe's request for waiver of the filing deadline for renewal applications, and direct the Licensing Branch to return Monroe's application to pending status for processing in accordance with Commission rules for a license authorizing operations on a primary basis. Finally, because we are returning the application to pending status in granting his Petition for Partial Reconsideration, we dismiss Monroe's Second Petition as moot.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 405, and Sections 0.331 and 1.106 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.106, the Petition for Partial Reconsideration filed by Michael W. Monroe on July 29, 2002, is GRANTED.

10. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Sections 0.331 and 1.925 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.925, the Request for Waiver filed by Michael W. Monroe on March 22, 2001, IS GRANTED.

11. IT IS FURTHER ORDERED that, pursuant to Sections 4(i), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 405, and Sections 0.331 and

¹⁰ Letter from Christine M. Gill, Counsel for Southern Communications Services, Inc. d/b/a Southern LINC to Paul D'Ari, Chief, Policy and Rules Branch, Commercial Wireless Division (Feb. 28, 2003).

¹¹ Petition for Reconsideration filed by Michael W. Monroe (Sept. 26, 2002).

¹² 47 C.F.R. § 1.925.

1.106 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.106, the Petition to Reconsideration filed by Michael W. Monroe on September 26, 2002, IS DISMISSED as moot.

FEDERAL COMMUNICATIONS COMMISSION

Paul D'Ari
Chief, Policy & Rules Branch
Commercial Wireless Division
Wireless Telecommunications Bureau